

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 15 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0207-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
R.L. ANTHONY ST. CLAIR,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20050637

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

R.L. Anthony St. Clair

Buckeye
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 In this petition for review, Anthony St. Clair challenges the trial court’s denial of a petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. Of the five issues presented in his pro se petition below, the court found one precluded under Rule 32.2(a)(2) because it actually had been raised and resolved on appeal. It found the other four issues precluded under Rule 32.2(a)(1) because they could have been raised on appeal but were not and were, therefore, waived. We will not disturb the court’s ruling unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 After causing a four-vehicle accident in February 2005 in which one victim was killed, St. Clair was indicted on multiple offenses. Following a seven-day jury trial in 2006, he was convicted of manslaughter, aggravated driving with a drug or its metabolite in his body, criminal damage in excess of \$10,000, and two counts of endangerment. The trial court found he had one historical prior felony conviction and sentenced him to a combination of concurrent and consecutive prison terms totaling thirteen years. This court affirmed St. Clair’s convictions and sentences on appeal. *State v. St. Clair*, No. 2 CA-CR 2006-0223 (memorandum decision filed Feb. 25, 2008).

¶3 St. Clair subsequently filed a notice of post-conviction relief pursuant to Rule 32. The trial court appointed counsel, who ultimately filed a notice pursuant to Rule 32.4(c)(2) stating she had been “unable to find any claims for relief to raise in Rule 32 post-conviction proceedings.” As permitted by Rule 32.4(c)(2), St. Clair filed a pro se petition,

in which he raised the following issues: (1) the trial court improperly admitted highly prejudicial evidence of his conduct and statements he made at a convenience store before the accident; (2) statements he made after the accident to a police officer at the emergency room were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966); (3) the results of a horizontal gaze nystagmus test were unreliable because St. Clair had sustained a head injury and had been treated with medication before the test was administered; (4) the court gave the jury an improper limiting instruction concerning St. Clair's actions at the convenience store before the accident occurred; and (5) the evidence was insufficient to sustain his convictions.

¶4 The trial court correctly determined that the first issue already had been presented and rejected on appeal, the other issues could have been raised on appeal, and all of St. Clair's post-conviction claims were, therefore, precluded. In his petition for review, St. Clair essentially reiterates the claims he had raised in the petition he filed below, adding that the trial court failed to address claims he had raised in his reply to the state's response to his petition for post-conviction relief. Rule 32.5 requires a post-conviction petitioner to include in his or her petition "every ground known to him or her for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed." A trial court does not abuse its discretion by refusing to consider claims raised for the first time in a reply to the state's opposition to the defendant's petition for post-conviction relief. *State v. Lopez*, 571 Ariz. Adv. Rep. ¶¶ 5-7 (Ct. App. Dec. 17, 2009); *cf. State v. Cannon*, 148 Ariz. 72, 79, 713 P.2d 273, 280 (1985) ("[An appellate court] can disregard substantive issues raised for the

first time in the reply brief.”); *State v. Ruggiero*, 211 Ariz. 262, n.2, 120 P.3d 690, 695 n.2 (App. 2005) (issues first raised in reply brief generally waived).

¶5 The trial court correctly found the claims St. Clair had raised in his petition for post-conviction relief were precluded pursuant to Rule 32.2(a). The court did not abuse its discretion in dismissing the petition for post-conviction relief. Although we grant the petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge